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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**JAMES M. CLEAVENGER,**

Case No. 6:13-cv-01908-DOC

Plaintiff,

vs.

**CAROLYN McDERMED, BRANDON  
LEBRECHT, and SCOTT CAMERON,**

Defendants.

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S SECOND MOTION TO  
EXTEND MOTION REPLY  
DEADLINES**

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Defendants object to Plaintiff's second motion for an extension of time to file a Response to Defendants' Alternative Motions for Judgment as a Matter of Law and for New Trial or Remittitur (Alternative Motions) on the basis he has failed to show good cause in support of the request. In the alternative, Defendants request Plaintiff be given only a short extension and that they be allowed a corresponding extension of their deadline to file a Reply brief in support of their Alternative Motions.

**I. PLAINTIFF HAS FAILED TO IDENTIFY GOOD CAUSE TO SUPPORT THE REQUEST**

Fed. R. Civ. Proc. 6(b) requires that good cause support any request for an extension of

time to act under the federal rules. Plaintiff has not offered any good cause to support his requested extension.

Throughout the course of this litigation, Plaintiff has requested an extension of his filing deadlines seven times. See docket, generally. That is at least one extension for each of his filing deadlines.

Plaintiff's response to Defendants' Alternative Motions was originally due on November 13, 2015. Dkt No. 193. Plaintiff filed a request to extend that deadline on November 13, 2015, the day the response was due. Defendants did not oppose that request and the court granted it. Dkt. No. 194. Plaintiff did not cite any good cause for the need for an extension. Dkt. No. 193.

Plaintiff's extended deadline for a response was November 24, 2015. Dkt. No. 194. Again, on the date the response was due, Plaintiff filed another motion as for an extension – this one for almost five weeks. Dkt. No. 203. Apparently Plaintiff assumes the court intends to grant his Motion for an extension, again.

Plaintiff's purported reasons for the extension include that the court reporter has not finished the final trial transcript and that Plaintiff's counsel has a busy schedule. Dkt. No. 193.

It is rarely, if ever, the case that there are final trial transcripts prepared in time to file and respond to post-trial motions. Both counsels in this case have the benefit of rough draft transcripts to assist in the preparation of motions and responses. Plaintiff has requested payment from Defendants for the cost of the rough transcripts for the entire trial, so he has had those for over two months now to review, and from the day Defendants' Alternative Motions were filed to use in preparing his response. Plaintiff's concern that the court reporter does not want cites to the rough transcripts, while understandable, does not excuse Plaintiff's obligation to file a timely response brief. The court makes the determination of what weight to attribute to the rough transcripts. Ms. Jessup has been asked to prepare the final transcripts and will be fully

reimbursed by both Defendants and Plaintiff for the costs of those finals, in addition to the cost of the roughs.

Defendants did not have the final transcripts when they filed their Alternative Motions. Plaintiff's request to extend his response date indefinitely until he has the benefit of the final transcripts is both excessive and unwarranted. Granting his request not only allows him an advantage Defendants did not have, but also rewards his continual flouting of this court's deadlines. As seen from Exhibit 1 to Mr. Kafoury's declaration (Dkt. No. 204), he did not even check in with the court reporter about the status of the transcripts until November 23, 2015 – one day before his response was due. Plaintiff is making up excuses for continual failure to meet court deadlines.

Plaintiff's reliance on his counsels' busy schedule is not good cause warranting a five week extension. We are all busy.

Plaintiff's second motion for an extension should be denied. He has missed the response deadline, so no response brief should be allowed by the court.

## **II. PROPOSED ALTERNATIVE TO DENIAL OF PLAINTIFF'S SECOND REQUEST FOR EXTENSION**

In the alternative to a denial of Plaintiff's request for an extension of time, Defendants propose a short extension, allowing Plaintiff a few additional days to complete his briefing. Additionally, if any extension is allowed, Defendants request a like extension of the deadline for filing their Reply brief.

DATED this 25th day of November, 2015.

HARRANG LONG GARY RUDNICK P.C.

By: s/ Andrea D. Coit  
Andrea D. Coit, OSB #002640  
Jonathan M. Hood, OSB #133872  
Attorneys for Defendants

## CERTIFICATE OF SERVICE

I certify that on November 25, 2015, I served or caused to be served a true and complete copy of the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFF'S SECOND MOTION TO EXTEND MOTION REPLY DEADLINES** on the party or parties listed below as follows:

- Via CM / ECF Filing
- Via First Class Mail, Postage Prepaid
- Via Email
- Via Personal Delivery

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## CERTIFICATE OF SERVICE